Employee Benefit Plans

Explanation No. 2

Minimum Vesting Standards Defined Contribution Plan

The purpose of the Worksheet Number 2 (Form 5623) and this explanation is to identify major problems in the area of plan vesting. However, there may be issues not mentioned in the worksheet that could affect the plan's qualification.

The worksheet applies only to plans to which Internal Revenue Code section 411 applies, except plans mentioned in section 411(e) (such as governmental plans) and plans that cover participants who are employed in maritime or seasonal industries.

Generally, a "Yes" answer to a question on the worksheet indicates a favorable conclusion while a "No" answer signals a problem concerning plan qualification. This rule may be altered by specific instructions for a given question. Please explain any "No" answer in the space provided on the worksheet.

The sections cited at the end of each paragraph of explanation are to the Internal Revenue Code, the Income Tax Regulations, and the Department of Labor (DOL) Regulations. Rev. Rul. means Revenue Ruling.

A basic requirement to keep in mind for the vesting standards is that each participant's vested interest must satisfy the statutory minimum at all times. A plan that generally provides faster vesting than the statutory minimum will not fail to qualify merely because the plan does not adhere to the specific language found in the statute. For example, a plan that provides full and immediate vesting at age 21 would satisfy the statutory minimum vesting requirements even though language about a requirement for years of service is not found in the plan.

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The technical principles in this publication may be changed by future regulations or guidelines.

I. Years of Service And Breaks in Service

This section applies only to plans in which years of service are a factor in determining a participant's vested interest. Therefore, DO NOT complete this section if the plan provides full and immediate vesting for each participant. Questions a. through f. and l. through p. apply to plans that count hours of service. Questions g. through p. apply to plans that use the elapsed time method of counting service.

Line a. A vesting computation period is a 12-consecutive-month period used to determine whether an employee has completed a year of service for vesting purposes. Any plan must designate a vesting computation period, except a plan that uses an "elapsed time" method of counting service, or a plan in which years of service are not a factor in determining a participant's vested interest.
DOL Regs. 2530.200b-1(a)
DOL Regs. 2530.203-2

Line b. Depending on the definition of "hour of service" and the method used to count these hours, a plan must credit an employee with 1 year of service for vesting if the employee completes at least 1000, 870, or 750 hours of service in a vesting computation period.

(i) (H = 1000) A plan that counts all hours of service, or that uses an equivalency based on a period of employment (day, week, semi-monthly payroll period, month, or shift), cannot require the completion of more than 1000 hours of service.
411(a)(5)(a)
DOL Regs. 2530.200b-1(a)
DOL Regs. 2530.200b-3(e)

(ii) (H = 870) A plan that counts "hours worked," or that uses an equivalency based on earnings for an employee who is compensated on an hourly rate, cannot require the completion of more than 870 hours of service.
DOL Regs. 2530.200b-3(d)(1)
DOL Regs. 2530.200b-3(f)(1)

(iii) (H = 750) A plan that counts "regular time hours," or that uses an equivalency based on earnings for an employee who is compensated on a basis other than an hourly rate, cannot require the completion of more than 750 hours service.
DOL Regs. 2530.200b-3(d)(2)
DOL Regs. 2530.200b-3(f)(2)
Answer the following by using the applicable method of counting hours (i, ii, or iii above).

Line c. If a plan counts all hours of service, credit each hour for which (1) an employee is paid or entitled to payment for the performance of duties, (2) an employee is paid or entitled to payment because of a period of time during which no duties are performed, and (3) back pay is either awarded or agreed to by the employer. Note: Item (2) may be limited to 501 hours for any single occurrence.
DOL Regs. 2530.200b-2(a)

If a plan credits hours of service by an equivalency based on a period of service, and an employee is required to be credited with at least 1 hour of service under the paragraph above, then, depending on the basis used, the plan must credit hours of service as follows:

Basis of Equivalency	Number of Hours Credited
Day	at least 10
Week	at least 45
Bi-weekly payroll period	at least 95
Month	at least 190

DOL Regs. 2530.200b-3(e)

If a plan counts "hours worked," credit each hour for which an employee is paid or entitled to payment for the performance of duties; also credit hours for which back pay is awarded, or agreed to, by the employer to the extent that the back pay covers a period in which the employee would have been employed in the performance of duties for the employer.
DOL Regs. 253a200b-3(d)(3)(i)

If a plan counts "regular time hours," credit each hour for which an employee is paid or entitled to payment for the performance of duties (except hours for which a premium rate is paid).
DOL Regs. 2530.200b-3(d)(3)(ii)

If a plan credits hours of service by an equivalency based on earnings for an employee who is compensated on an hourly rate, an employee must be credited during a computation period with at least the number of hours equal to either the employee's total earnings--

(1) from time to time during the computation period, divided by the hourly rate of those times; or

(2) for performance of duties during the computation period divided either by the employee's lowest hourly rate during that time, or by the lowest hourly rate payable to an employee in the same, or a similar, job classification.
DOL Regs. 2530.200b-3(f)(1)(i)

If a plan credits hours of service by an equivalency based on earnings, and determines compensation other than on an hourly rate, the employee must be credited during a computation period with at least the number of hours equal to his or her total earnings for duties performed during that period, divided by the employee's lowest hourly rate of compensation during the same period. (See the DOL Regulations.) Note: If the same hourly rate of compensation is used for all employees, this method may result in discrimination in favor of highly compensated employees.
DOL Regs. 2530.200b-3(f)(2)

Line d. If H = 1000 in b., above, answer this question; otherwise check N/A. If a plan credits hours of service for periods during which no duties are performed, the plan must designate the method of determining the number of hours to be credited and the method of crediting the hours to the computation periods. The plan must conform to the requirements of DOL Regulations sections 2530.200b-2(b) and (c). Section 2530.200b-2(f) of the DOL Regulations, however, also indicates that a plan is not required to state

these rules if they are incorporated by reference.
DOL Regs. 2530-200b-2(b), (c) & (f)

Line e. The break in service rules allow a plan to disregard certain service before the employee has a break. If all of an employee's service with an employer is counted for vesting, the plan need not provide these rules. In this case check N/A.

Depending on the definition of "hour of service" and the method used to count these hours, a plan may charge an employee with a break in service for any vesting computation period in which the employee fails to complete more than B hours of service. The number required for B, if a certain method of counting hours is used, equals half of the hours used in question b. of this section of the worksheet. Therefore, a plan may provide that an employee be charged with a break in service if in a computation period the employee fails to complete: more than 500 hours of service in a plan that counts all hours of service; or, more than 435 hours if the basis used is "hours worked"; or, more than 375 hours if the basis is "regular time hours."
DOL Regs. 2530.200b-3 & 4
DOL Regs. 2530.203-2(d)

Line f. An individual shall be credited with certain hours of service if such individual is absent from work for any period by reason of 1) pregnancy of the individual, 2) birth of a child of the individual, 3) placement of a child with the individual in connection with an adoption or 4) caring for a child described in (2) or (3) immediately following such birth or placement. This credit is credit for maternity or paternity leave. Credit for maternity or paternity leave is only made to avoid a break in service and not to obtain a year of service. The absence does not have to be approved leave.

Credit for maternity or paternity leave is required only if such leave is on account of the reasons described above. Thus if an individual quits employment with employer A and two years later adopts a child, no credit under this provision would be given if the individual eventually returns to work for employer A because said individual's absence from employer A's workplace is on account of quitting and not on account of the adoption of or the caring for the child immediately following the adoption.

Hours of service must be credited to the computation period in which the first hour of maternity or paternity leave occurs, if such individual would experience a break in service with respect to such computation period if such maternity or paternity leave is not credited and such individual will not experience a break in service if such maternity or paternity leave is credited. If such maternity or paternity leave is not credited to the first computation period, it is credited to the second computation period whether or not it is needed to preclude a break in service.

The rules may be illustrated with the following example: Individual A separates from service on March 1, 1986, of a calendar year computation period after earning 300 hours of service. The plan defines a year of service as a computation period in which the employee earns 1000 hours. The employer provides for paid maternity leave for a period not to exceed 300 hours.

Under the normal rules of crediting service paid maternity leave must be credited for service. Therefore, individual A in 1986 would not experience a break in service even if the hours required to be credited under REA are not so credited. Accordingly, no hours of service would be credited to the first computation period in 1986. Therefore, all such hours of service are credited in the second computation period of 1987.

The number of hours credited with respect to a computation period is the number of hours such individual would normally have worked in the computation period if such individual were not on maternity or paternity leave. If the number is not ascertainable, the plan may credit 8 hours with respect to any day said individual is absent on maternity or paternity leave. The plan may limit the number of hours credited to any computation period to the number of hours needed to avoid a break in service, i.e., 501 hours, 436 hours, or 376 hours depending on how hours are counted. The plan may provide that the participant has the burden of proving that the absence was by reason of one of the covered causes.

The plan can use a simplified method for complying with the requirements relating to maternity and paternity absences. If the plan's break in service rules require a minimum of six consecutive one year breaks in service for service to be disregarded (versus the statutory minimum of five), then the plan will not have to include any special rules relating to maternity and paternity absence. This simplified method is available only if the plan computes years of service on the basis of hours of service or permitted equivalencies. It does not apply to elapsed time plans.
411(a)(6)(E)1.410(a)-9

Line g. The employment commencement date must be no later than the date on which the employee first performs an hour of service for the employer. The severance from service date is the earlier of the date an employee quits, retires, is discharged, or dies, or the first anniversary of the first day of a period of absence from service for any reasons other than quitting, retiring, discharge, or death.

The employee must be credited with service equal to at least the time between the employment commencement date and the severance from service date.
1.410(a)-7(b) & 411(a)(5)(B)

Line h. Generally a plan must aggregate all separate periods of service, except for any that may be disregarded due to the rule of parity. Alternatively, instead of keeping separate periods of service, the plan may aggregate by adjusting the employment commencement date. If the plan uses this alternative to credit the aggregate period of service, check "Yes" for question h.
1.410(a)-7(b)(6)(ii) & 411(a)(5)(B)

Line i. A period of severance is the period of time between the employee's severance from service data and the date the employee again performs an hour of service for the employer.

If an employee severs from service by quitting, being discharged or retiring, and then performs an hour of service within 12 months of the severance from service date, the plan must consider the period of severance as a period of service.

Also, if an employee severs from service for any reason other than quitting, being discharged, or retires and then performs an hour of service within 12 months of the date on which he or she was first absent from the service, the plan must consider that period of severance as a period of service.

1.410(a)-7(d)(1)(iii) & 411(a)(5)(B)

Line j. The break in service rules allow a plan to disregard certain service before the employee has 5 consecutive 1-year breaks. If all of an employee's service with an employer is counted for vesting, the plan need not provide these rules. In this case, check N/A.

If a plan uses elapsed time, substitute "1-year period of severance" for "1-year break in service." A 1-year period of severance is a 12-consecutive month period beginning on the severance from service date and ending on the first anniversary of that date provided that within this period the employee does not perform an hour of service for the employer maintaining the plan.

1.410(a)-7(d)(4) & 411(a)(5)(B)

Line k. An individual shall not incur the first 12 month period of severance that would otherwise be counted if severance is due to maternity or paternity leave. Such 12-month period is neither counted as a year of service nor as a period of severance. Maternity or paternity leave is a period an individual is absent from work by reason of 1) pregnancy of the individual, 2) birth of the child of the individual, 3) placement of a child with the individual in connection with an adoption or 4) caring for a child described in (2) or (3).

Credit for maternity or paternity leave is required only if such leave is on account of the reasons described above. Thus, if an individual quits employment with employer A and two years later adopts a child, no credit under this provision could be given if the individual eventually returns to work for employer A because such individual's absence from employer A's workplace is on account of quitting and not on account of the adoption of or the caring for the child immediately following the adoption.

If an individual works until July 1, 1986, is first absent from employment on July 1, 1986 on account of maternity or paternity leave, and on July 1,1989 performs an hour of service, the period of service must include the period from the employment commencement date until June 30, 1987 (one year after the date of separation for a reason other than the employee quitting, retirement, discharge or death). The period from July 1, 1987 to June 30, 1988 is neither a period of service nor a period of severance. The period of severance would be from July 1,1 988 to June 30, 1989.

411(a)(6)(E)(iii)
1.410(a)-9

Line l. In general, for vesting purposes, count all years of service with the employer who maintains the plan. However, there are several exceptions to this rule. Years of service before an employee reaches age 18 may be excluded. If a plan uses a vesting computation period, count the vesting computation period in which an employee becomes 18 as a year of service. If a plan uses elapsed time, count the period after the employee became 18 when figuring the employee's period of service.

Except for top-heavy years, a contributory plan that uses a vesting computation period may exclude a year of service in which an employee made no mandatory contributions, if the absence of the contribution was the only reason the employee was ineligible to participate in the plan. A year of service in which a partial mandatory contribution was made may not be excluded, regardless of the effect on participation. If a plan uses elapsed time you may exclude only the period in which the mandatory contribution was not made. You may also disregard years of service before the employer maintained the plan or a predecessor plan as well as years of service not required to be taken into account because of a break in service. (For a definition of a predecessor plan, see 1.411 (a)-5(b)(3)(v)(B) of the Income Tax Regulations.) You may also disregard the years of service completed before January 1, 1971, unless the employee completed 3 years of service (whether or not consecutive) any time after December 31, 1970. (In determining whether an employee completed 3 years of service under this rule, do not apply the other exceptions described in this paragraph.) Finally, you may disregard plan years completed before section 411 applied to the plan, if the service would have been disregarded under any terms of the plan which at that time served as break-in-service rules.

411(a)(4)
1.411(a)-5(a) & (b)

Line m. For vesting purposes, count all years of service with the employer, including the years spent as a nonparticipant and those when the employee was in a category of employees excluded from the plan, unless one of the exceptions noted in section 411(a)(4) applies (see l. above). Years of service excluded for years prior to age 22 under the law before the Retirement Equity Act may not, subsequent to the effective date of REA, be excluded unless 1) such service is for years prior to age 18, or 2) such service would be excluded under the Rule of Parity prior to REA. This change only applies to those with an hour of service after REA's enactment.

Line n. For vesting purposes, years of service with an employer must include credit for service with other related employers (while related) that are members of a controlled group of corporations, (see section 1563(a) without regard to subsection (a)(4) and (e)(3)(C)) and trades and businesses under common control and affiliated service groups (see sections 414(b), (c) and (m)).

1.411(a)-5(b)(3)(iv)(B)
414(b), (c) & (m)

Line o. If the employer maintains the plan of a predecessor employer, service with the predecessor is counted as service with the employer. If the employer is not maintaining the plan of a predecessor employer, check N/A.
414(a)(1)

Line p. Services of any employee who is a leased employee to any employer aggregated under section 414(b),(c), or (m) must be credited for vesting purposes whether or not such individual is eligible to participate in the plan. Thus, for example, if an individual was an employee of X, participates in plan Y and separates with X subsequent to acquiring a benefit in plan Y but prior to obtaining vesting in plan Y, begins working immediately with leasing company Z and through company Z is leased back to X, and is now excluded from plan Y, such service as a leased employee to X must be counted in plan Y for purposes of determining vesting, breaks in service, etc., of such individual's prior accrued benefit.
414(n)(4)
Q&A 12 Notice 84-11

II. Vesting on Separation From Service - Return to Service Without a Break in Service

A distinction should be made between a separation from service and a break in service. A participant may separate from service without affecting his or her position on the vesting schedule, if the participant returns to service with the employer before having 5 consecutive 1 year breaks in service.

For example: A plan has a vesting computation period that coincides with the calendar year. An employee separates from service after January 1, after completing 300 hours of service. The employee later returns to covered employment and completes more than 200 hours of service before December 31 of the same year.

Of course, an employee would have a break in service without a separation from service in any vesting computation period in which the employee completes 500 or less hours of service while remaining employed with the employer.

Line a. In a given vesting computation period, it is possible that a participant will avoid a break in service but will not complete sufficient hours of service to be credited with a year of service. In this case the participant will remain in the same position on the vesting schedule (without advancement).
1.411(a)-6

Line b. The plan may provide for forfeiture of nonvested amounts prior to a participant incurring 5 consecutive 1-year breaks in service only as the result of distribution on termination with opportunity for restoration upon resumption of covered employment (cash-out/buy-back). See V., below regarding rules relating to cash-out distributions. If the participant incurs 5 consecutive 1-year breaks in service, the plan may be able to forfeit nonvested amounts even though there has not been a cash-out distribution. See III., below.
411(a)(7)(B) & (C)
1.411(a)-7(d)(4)

III. Vesting on Return to Service After a Break in Service

A plan may provide that a participant who separates from service and has a one year break in service will not receive the credits described below immediately. The plan cannot, however, require the participant to complete more than one year of service upon the participant's return before the credits described below are provided the participant. Service is figured from the date of return to employment. After the waiting period is satisfied, the waiting period is counted as part of the postbreak service.

In the case of a participant, whether or not vested upon separation, all service must be counted if the participant returns prior to having 5 consecutive breaks in service. In such instances, pre-break service will count in determining vesting in both pre-break and post-break account balances and post-break service will count in determining vesting in both pre-break and post-break account balances.

If the participant has 5 or more consecutive breaks in service, all service (both pre-break and post-break) must be counted in determining the vesting percentage in the post-break account balances in two circumstances. First, when a participant has any nonforfeitable interest in the accrued benefit attributable to employer contributions at the time of separation from service. Second, when the number of years of service before the break exceed the number of consecutive break in service years.

Thus, in the case of a participant with a nonforfeitable interest at the time of separation, the length of the break in service is irrelevant with respect to counting pre-break service for the percent of vesting in post-break account balances upon reemployment. The length of the break is relevant with respect to counting post-break service for percent of vesting in pre-break accrued benefits (obviously, only where the participant was not 100% vested upon the break) if the break in service is at least 5 consecutive years.

For a nonvested participant, under the rule of parity, pre-break service must be counted in determining percent vesting in post-break account balances unless the number of consecutive break in service years equals or exceeds the greater of the number of years of service before the break or 5. For the nonvested participant (just as for a vested participant) post-break service is counted for the percent vesting in pre-break account balances only where the number of consecutive break in service years is less than 5.

In all cases, post-break service must apply to post-break account balances.

For a plan that uses elapsed time, if the participant has one year of severance, the plan is required to consider prior periods of service in determining the participant's interest in post severance contributions if the latest period of severance is less than five years.

If the participant has at least a 5 year period of severance, the plan is required to consider a prebreak period of service in determining the vesting portion of post severance contributions if the period of severance is less than the period of service.
411(a)(6)(B), (C) & (D)
1.411(a)-(6)(c)(1)
1.410(a)-7(d)(7)

IV. Contributory Plans

Line a. The plan must provide a method to identify and distinguish that part of any account balance that resulted from employee contributions from that part that resulted from employer contributions. A plan that provides for separate accounts for employer and employee contributions satisfies this requirement. When separate accounts are not maintained, the account balance of employee contributions can be determined by multiplying the total account balance by a fraction:

(1) The numerator is the total amount of the employee's contributions under the plan less withdrawals, and

(2) The denominator is the total amount described in (1) above, and the employer's total contributions under the plan on behalf of the employee, less withdrawals.

Employee contributions include all amounts that are contributed to the plan, even if the amounts are used to provide ancillary benefits such as death, incidental life, or health insurance.

Employee withdrawals include only amounts distributed to the employee. They do not reflect the cost of any death benefit under the plan (cost of pure life insurance protection is not considered paid for by employee contributions).
411(C)(2)
1.411(c)-(1)

Line b. An employee's account balance that resulted from the employee's own contributions must be nonforfeitable.
411(a)(1)

Line c. The plan must provide that vesting in employer contributions conforms to statutory required minimums and may not be offset by nonforfeitable rights to account balances that resulted from employee contributions (which are always fully vested).
TIR 1334(V-1)

Line d. A plan cannot provide that an employee may forfeit any part of the account balance that resulted from employer contributions because of the withdrawal of the employee's own contributions after the employee is vested in 50 percent of the account balance that is the result of employer contributions. For contributions made before September 2, 1974, see Line e.
401(a)(19) & 411(a)(3)(D)
1.401(a)-19

Line e. If forfeitures cannot occur because of a withdrawal of mandatory employee contributions, check N/A.

Except where top-heavy rules are applicable, a plan may require a participant to forfeit all or part of the participant's account balance that resulted from employer contributions because of withdrawal of any mandatory employee contributions if the participant is less than 50 percent vested in the account balance. However, if the forfeiture is permitted, the forfeited amounts must be restored when the participant repays the amount of mandatory employee contributions withdrawn.

When a participant has a right to part of the employer-derived benefit from contributions made before September 2, 1974, the right is not treated as forfeitable even though all or part of the benefit may be forfeited by the participant's withdrawal of an amount that resulted from the benefit. However, the benefit must have been the result of mandatory contributions by the participant before September 2, 1974, and the amount that can be forfeited must not be more than the proportionate amount withdrawn. This rule does not apply to a plan with mandatory contributions made after September 2, 1974.

The amount required to be restored must not be less than the amount forfeited. Forfeited amounts may be restored from income or gain to the plan, forfeitures, or employer contributions. If assets for the restored benefit are provided in the plan year following the plan year in which the repayment occurs, an account balance will not be considered as unfunded. The plan may require that restoration of employer contributions be contingent on repayment of withdrawn mandatory employee contributions. The plan may require repayment no earlier than (i) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently reemployed, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (ii) in the case of any other withdrawal, 5 years after the date of the withdrawal.

Also, the plan could delay the forfeiture until the expiration of the time for repayment. Then, because no restoration would be required, a "No" answer is acceptable.
1.411(a)-7(d)(2) & (3)

V. Cash-Outs and Other Distributions of Benefits That Result From Employer Contributions

A cash-out is a distribution of all or some portion of the participant's nonforfeitable accrued benefit under the plan, accompanied by a forfeiture of the nonvested benefit and a disregard to service to which the distribution is attributable for the purpose of computing the employee's accrued benefit. It the plan has no cash-out provision, this line is N/A and only lines b. and c. need be completed. Cash-out rules may not be applied to accounts from which mandatory contributions have been withdrawn. The forfeitable account

balance attributable to a cash-out distribution must be forfeited no later than the end of the plan year in which the participant incurs 5 consecutive 1-year breaks in service. Also, answer line c. for all distributions, not just cash-outs.
1.411(a)-7(d)(1)
411(a)(11)

Line a. Distributions which cash-out an accrued benefit
(i) Any involuntary cash-out distribution must be an amount not less than the participant's entire nonforfeitable account balance. An involuntary cash-out is one which does not require consent. An involuntary cash-out may not be made if the participant's nonforfeitable account balance, including employee derived amounts, is in excess of $5,000 ($3,500 for plan years beginning before August 6, 1997) and the benefit is immediately distributable.
411(a)(7)(B)(i)
1.411(a)-7(d)(4)(i)
(ii) A cash-out distribution may only be made on an employee's termination of participation in the plan. Unless the participant receives a cash-out distribution on termination, the plan must delay forfeiture until the plan year in which the participant incurs 5 consecutive 1-year breaks in service. A distribution made not later than the close of the second plan year following the year in which a participant terminates participation in the plan is deemed to be made on termination. Distributions after the second plan year and prior to the 5th consecutive break may be made on account of termination of participation if the facts and circumstances so demonstrate. If the participant has received a cash-out distribution, the plan may forfeit benefits at any time until, but no later than, the end of the plan year in which the participant incurs 5 consecutive breaks in service. Pursuant to final regulations under section 1.411(a)-7(d)(4)(i) and (vi), an involuntary distribution of an employee's vested account balance of $5,000 or less can be treated as made due to termination of the employee's participation if the distribution could have been made at the termination of participation but for the fact that the account balance was then valued at more than the cash-out limit previously in effect under section 411(a)(11). This provision applies to distributions made on or after March 22, 1999. However, an employer is permitted to apply this rule to plan years beginning on or after August 6, 1997.
411(a)(7)(B)
1.411(a)-(d)(4)(i) & (iii)
(iii) A plan that provides for cash-out distributions must contain a repayment provision in the event the participant resumes employment covered by the plan. The plan may provide that repayment must be made (i) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently reemployed, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (ii) in the case of any other withdrawal, 5 years after the withdrawal. A participant who is cashed-out and who, upon subsequent reemployment, repays the full amount must be reinstated in the full array of section 411(d)(6) protected benefits that existed with respect to his or her benefit prior to the cash-out. (See VII.c., below.) Upon repayment, the employer-derived benefit required to be restored by the employer must not be less than the amount of the account balance of the employee, both the amount distributed and the amount forfeited, unadjusted by any later gains or losses.
1.411(a)-7(d)(4)(iv) & (V)
1.411(d)-4 Q&A 2(a)(2iii)

(iv) When a cash-out distribution has been made, the service attributable to the amount distributed may be disregarded for the purposes of computing the balance to remain in an employee's account. In the case of a cash-out distribution where the nonforfeitable account balance is not in excess of $5,000, the entire remaining account balance will be forfeited.
For a voluntary cash-out, an employee may receive less than the total nonforfeitable account balance in a plan that provides for a partial cashout. Then, to get the account balance not required to be taken into account at any time, multiply the employee's total account balance at that time (figured as though there was no prior distribution) by a fraction. The numerator is the amount of the distribution, and the denominator is the present value of the total nonforfeitable benefit immediately before the distribution. Service disregarded under this section may not be disregarded when determining employees' eligibility to participate or their position on the plan's vesting schedule.
411(a)(7)(B)
1.411(a)-7(d)(4)(iii)

Line b. Distributions which do not cash-out an accrued benefit.
(i) and (ii) It may be possible under some plans for a participant who separates from service with less than a 100 percent vested interest in the account balance to receive a distribution of the vested interest before having 5 consecutive breaks in service. In this event, and in plans in which an employee can increase his or her percentage of vesting after a distribution, figure account balances in a manner which satisfies one of the methods outlined below.
A separate account may be established or an account balance must be maintained for the employee's interest in the plan as of the time of the distribution and at any relevant time in the future. A participant's vested interest in a separate account cannot be less than the amount determined by the first of the following formulas:
(1) $X = P(AB + [R \times D]) - (R \times D)$
X is vested interest at relevant time.
P is vested percentage at relevant time.
AB is account balance at relevant time.
D is amount of the distribution.
R is the ratio of the account balance at the relevant time over the account balance after distribution.
The relevant time is the time at which the vested percentage in the account cannot increase.
(2) $x = P(AB + D) - D$
may be used instead of the above formula. A separate account is not needed with this formula.

Line c. The plan cannot immediately distribute any benefits where the vested account balance (taking into account employer and employee contributions) exceeds $5,000 without the consent of the participant (see below for transition rules). A benefit is immediately distributable if any part of the benefit (account balance) may be distributed before the later of NRA or age 62. If a participant has attained NRA, but has not yet attained age 62 (or vice versa), the participant's failure to consent to a distribution is deemed to be an election to defer commencement of payment sufficient to satisfy section 401(a)(14). For plans subject to section 417, spousal consent is also required unless the nonforfeitable account balance does not exceed $5,000 or the distribution is in the form of a qualified joint and survivor annuity. Also, in a plan subject to section 417, participant and spousal consent to an immediate distribution will be required where such distribution is after the "annuity starting date" (defined in section 417(f)(2)), even if the nonforfeitable account balance does not exceed $5,000. See Worksheet No. 3 concerning Joint and Survivor requirements.

The cash-out limit under section 411(a)(11) was raised to $5,000 Regulations from $3,500 for distributions after August 5, 1997. were issued implementing this increase and other changes to the cash-out rules one of these changes was to the lookback rule, which provided that the present value of a vested account balance was deemed to exceed the cash-out limit if it had exceeded the cash-out limit at the time of any previous distribution. Temporary regulations under section 1.411(a)-11(c)(3), effective for distributions on or after March 22, 1999, eliminated the lookback rule for distributions other than those made pursuant to an optional form of benefit under which at least one scheduled periodic distribution remained payable. Under the final regulations, effective October 17, 2000, the lookback rule was The final regulations also eliminated for all distributions eliminated the parallel lookback rule under section 1.417(e)1(b)(2)(1). Thus the lookback rule was eliminated both for plans subject to the spousal-consent rules of section 417 and for plans Under this removal of the lookback not subject to those rules rule, a participant's vested account balance of $5,000 or less may be distributed without consent even if the account balance had been valued at more than $5,000 at the time of a previous distribution. However, in accordance with section 417(e)(1), if a plan is subject to the spousal consent rules consent would be required after the annuity starting date for the immediate distribution of the account balance being distributed in any form, including a qualified joint and survivor annuity or qualified preretirement survivor annuity, regardless of the amount of the account balance.

Accordingly, the following transitional rules apply for distributions prior to October 17, 2000-

1) Where payment in the form of a qualified joint and survivor If a annuity is required with respect to a participant participant's account balance is immediately distributable, and the value of a participant's vested account balance derived from employer and employee contributions exceeds $5,000, the participant and the participant's spouse (or where either the participant or the spouse has died, the survivor) must consent to In addition, if at the any distribution of the account balance time of any prior distribution the account balance exceeded $3,500 (in plan years beginning before August 6, 1997) or exceeded $5,000 (in plan years beginning after August 5, 1997), and the account balance is immediately distributable, the participant and the participant's spouse (or where either the participant or the spouse has died, the survivor) must consent to any distribution of the account balance. However, the participant (and spouse, if any) must consent to the distribution regardless of the amount of the account balance if there has already been an annuity starting date with regard to such account balance

2) Where payment in the form of a qualified joint and survivor annuity is not required with respect to a participant: If a participant's account balance is immediately distributable, the participant and the participant's spouse (or where either has died, the survivor) must consent to any distribution of the account balance if the value of the vested account balance derived from employer and employee contributions--

a) for plan years beginning before August 6, 1997, exceeds $3,500 (or exceeded $3,500 at the time of any prior distribution);

b) for plan years beginning after August 5, and for a distribution made prior to March 22, 1999, exceeds $5,000 (or exceeded $5,000 at the time of any prior distribution); or

c) for plan years beginning after August 5, 1997 and for a distribution made after March 21, 1999 but before October 17, 2000, exceeds $5,000 or is a remaining payment under a selected optional form of payment of an account balance that exceeded $5,000 at the time the selected payment began.

411(a)(11), 417(e)
1.411(a)-7(d)(5)
1.411(a)(11)-1

VI. Vesting Schedule

The plan's vesting schedule identifies the factor to be used when determining how much of the employer's contributions to the account an employee is entitled to at any time.

Lines a. and b. In general, a plan must provide vesting at a rate at least equal to one of the two vesting schedules described in section 411(a)(2)(A) and (B). Section 411(a)(2)(A) is satisfied if an employee is 100% vested in the employer-derived accrued benefit after no more than 5 years of service ("5-year cliff" vesting). Section 411(a)(2)(B) is satisfied if an employee is 20% vested after 3 years of service and an additional 20% for each subsequent year of service with 100% vesting after 7 years of service ("3 to 7 year graded" vesting). (For years beginning before the applicable effective date in the Small Business Job Protection Act of 1996, a multiemployer plan could provide for 10-year cliff vesting for employees covered under a multiemployer collective bargaining agreement. A multiemployer plan may not retain 10-year cliff vesting with respect to participants who have more than one hour of service under the plan in a plan year beginning on or after the applicable effective date, but must satisfy one of the vesting schedules in section 411(a)(2)(A) and (B). The applicable effective date is the earlier of January 1, 1999, or the later of January 1, 1997, or the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates.) A plan's vesting schedule cannot merely satisfy the requirements of any one of the applicable permissible vesting schedules in section 411(a)(2) in a given year without satisfying the requirements of that particular vesting schedule for all years. For example, a plan other than a multiemployer plan that provides no vesting for the first four years of service and then provides 60 percent vesting after 5 years of service with an additional 20 percent for each subsequent year to provide 100 percent vesting after 7 years of service would not satisfy the requirement. This schedule would satisfy a composite of the requirements of either "5-year" or "3-7 year" vesting for all years but would not meet the requirements of either one of these schedules for all years.

A plan may no longer be required to adopt a "4-40" vesting schedule. Furthermore, a plan may not continue to use the "4-40" vesting schedule because it does not provide vesting at a rate at least equal to one of the vesting schedules described in section 411(a)(2).

A plan may satisfy one of the minimum vesting schedules for one group of employees and another schedule for another group of employees provided the groups are not structured to avoid the minimum vesting requirements.
1.411(a)-3(a)(2)
Rev. Proc. 89-29

Line c. A new vesting schedule substituted by a plan amendment must satisfy one particular vesting schedule of the schedules listed in section 411(a)(2)(A) or (B) for each year of service, but this does not have to be the same schedule as the plan satisfied before the amendment. Therefore, a plan that provides for 100 percent vesting only after 5 years of service may be amended to "3 to 7 year" vesting provided the requirements of section 411(a)(10) are met.
1.411(a)-3(a)(3)

VII. Amendments Affecting Accrued Benefits and Vesting

This section applies to plan amendments that affect, either directly or indirectly, the accrued benefit or the vesting schedule under the plan. Code sections 411(a)(10) and 411(d)(6) generally prohibit any plan amendment that would decrease the accrued benefit of any participant or the nonforfeitable percentage applicable to any participant.

Line a. If the plan's vesting schedule is not being changed, check N/A.

If the vesting schedule is being amended, for every employee who is a participant on the amendment adoption date or the amendment effective date, whichever is later, the nonforfeitable percentage (determined as of that date) of the participant's right to the employer-derived accrued benefit may not be less than the participant's percentage figured under the plan without regard to the amendment. For example, if a plan is being amended to replace a 3 to 7 year vesting schedule with 5 year cliff vesting, a participant who has three years of service at the time of the amendment and elects to go under the new schedule must be 20% vested in the amount accrued in the fourth year (as well as in amounts accrued in the first three years).
1.411(a)-8(a)

Line b. If the plan's vesting schedule is not being changed, or if the schedule is being changed but the nonforfeitable percentage under the amended schedule cannot, at any time, be less than the percentage determined under the old schedule, check N/A.

Although each participant's nonforfeitable percentage, as of the amendment's adoption or effective date, may not be less under the new schedule than it would have been under the old schedule (see a., above), the new schedule may provide for lower nonforfeitable percentages in future years. For example, if a plan replaced a 5 year vesting schedule with a 3 to 7 year vesting schedule, a participant with four years of service on the date of the change could have 40 percent vesting after the change which was more than 0 percent vesting before the change. However, when the participant earned a fifth year of service, the participant's vesting would only be 60 percent under the new schedule whereas it would have been 100 percent under the old schedule.

If this reduction in future vesting can occur, the plan must provide that each participant who has completed 3 years of service with the employer and whose nonforfeitable percentage is determined under the new vesting schedule may elect to have the nonforfeitable percentage determined under the old vesting schedule.

The plan may limit the period for this election, and the election may be irrevocable.
1.411(a)-8T(b)

Lines c., d., e., f., and g. If the National Office of the IRS has approved the amendment as being a retroactive amendment which may decrease accrued benefits under Code section 412(c)(8), and section 302(c)(8) of ERISA, check N/A.

No other plan amendment except for amendments described in the fifth following paragraph may decrease, either directly or indirectly, the accrued benefit of any plan participant. Plan provisions that may indirectly decrease a participant's accrued benefit include, but are not limited to, those relating to years of service and breaks in service for benefit accrual, and to actuarial factors for determining optional retirement benefits. Any changes in the method of determining optional retirement benefits are subject to the protections of the anti-cutback provisions. Benefit changes are not precluded. The plan must provide, however, that the benefit available at any future date will not be less (with respect to an individual who either before or after the amendment satisfies the pre-amendment requirements for such benefit) than the benefit accrued as of the date of the amendment.

"Section 411(d)(6) protected benefits" are benefits described in section 411(d)(6)(A), early retirement benefits and retirement-type subsidies, and optional forms of benefit. A plan amendment that has the effect of eliminating or reducing such benefits (other than to the extent provided in regulations), with respect to benefits accrued prior to the amendment, is treated as an impermissible cutback of section 411(d)(6) protected benefits. The protection of section 411(d)(6) also applies in the case of plan mergers, transfers, and transactions amending or having the effect of amending a plan to transfer plan benefits.
1.411(d)-4 Q&As 1(a) & 2(a)(3).

An optional form of benefit is a distribution form with respect to an employee's benefit that is available under the plan and is identical with respect to all features relating to the distribution form, including the payment schedule, timing, commencement, medium of distribution, the portion of the benefit to which such distribution features apply and the election rights with respect to such optional forms. Thus, to the extent there are any differences in such features, the plan provides separate optional forms of benefit. For example, a joint and 50 percent survivor annuity and a joint and 75 percent survivor annuity are separate optional forms, regardless of whether they are actuarially equivalent. Likewise, a distribution that is available in cash or in employer securities consists of two separate optional forms of benefit. A benefit payable at different times (such as early or late retirement), or upon the occurrence of different events or the satisfaction of different conditions, consists of separate optional forms of benefit. A pattern of repeated plan amendments providing for substantially similar benefits in similar situations for substantially consecutive, limited periods of time will be treated as creating a protected optional form to the extent necessary to carry out the purposes of section 411(d)(6). For example, a pattern of repeated plan amendments providing that a particular optional form of benefit is available to certain named employees for a limited period of time may result in that optional form being treated as provided under the terms of the plan to all covered employees without regard to the limited period of time and the limited group of named employees. However, patterns of repeated plan amendments adopted and effective before July 11, 1988 are to be disregarded in determining whether such amendments have created an ongoing optional form of benefit under the plan.
1.411(d)-4 Q&A 1(b)
1.411(d)-4 Q&A 1(c)

The following benefits are among those not subject to the protection of section 411(d)(6): ancillary life insurance protection, social security supplements described in section 411(a)(9), the availability of loans (other than the distribution of an employee's accrued benefit upon default under a loan), the right to make employee contributions or elective deferrals, and the right to direct investments.
1.411(d)-4 Q&A 1(d)

The regulations provide that under certain circumstances protected benefits may be eliminated or reduced. These circumstances include the situation where such an elimination or reduction is necessary to retain qualified status because of a change in law, provided the plan is timely amended to comply with the change in law and section 7805(b) relief is granted. Also, pursuant to transition rules in regulations 1.401(a)-4 and 1.411(d)-4, certain protected benefits may be eliminated under certain circumstances in order to comply with those regulations. If a plan has more than two joint and survivor annuity options which are actuarially equivalent and otherwise identical (e.g., joint and 50 percent, 75 percent, and 100 percent), it may generally eliminate the options that fall between the lowest and highest survivor benefit percentages (i.e., in this case, the joint and 75 percent survivor annuity). A plan may also eliminate the right to a future distribution in the form of property (other than cash) if on plan termination a participant may elect to receive the optional form of benefit in the specified property. A profit-sharing plan that does not provide for an annuity option and that is terminated may be amended to provide for the distribution of a participant's benefit upon termination in a single sum without the participant's consent provided the employer does not maintain another defined contribution plan (other than an ESOP). A plan may be amended to add an involuntary cash-out provision or to change the threshold amount for an involuntary cash-out. A plan may also be amended to eliminate or change a provision for loans, to eliminate provisions permitting transfers of benefits between plans of the employer, to make certain de minimis changes in the timing of benefits, and special rules that would permit the transfer of benefits between defined benefit and defined contribution plans. There are also special exceptions for ESOPs.
1.401(a)-4 Q&A 5
1.41 1(d)-4 Q&As 2, 3 & 8

In general, a plan may not be amended to add or modify conditions with respect to section 411(d)(6) protected benefits if the amendment would result in any further restriction. However, objective conditions may be added to benefits that have not yet accrued and may also be added to accrued protected benefits if permitted under the transition rules or the permissible benefit cutback provisions of the regulations. Revised section 411(d)(6) regulations were published in the Federal Register 9/6/2000 (TD 8900) and generally apply after 9/5/2000. These regulations permit plans to be amended to restrict or eliminate optional forms of benefit as described below.
1.411(d)-4 Q&As 2,3, & 7

There are no exceptions to the protections of section 411(d) for plan terminations except as expressly provided under the regulations.
411(d)(6)
1.411(d)-3(b)
1.411(d)-4 Q&As 2, & 3

The following paragraphs describe the conditions under which plans may be amended to restrict or eliminate optional forms of benefit
1.411(d)-4 Q&As 2, & 3
A defined contribution plan does not violate the requirements of section 411(d)(6) merely because the plan is amended to eliminate or restrict the ability of a participant to receive payment of accrued benefits under a particular optional form of benefit if, after the plan amendment is effective with respect to the participant, the forms of payment available to the participant include payment in a single-sum distribution form that is otherwise identical to the optional form of benefit that is being "Otherwise identical" means that the eliminated or restricted. single-sum benefit paid must be identical in every aspect to the optional form eliminated or restricted, except that the participant's entire benefit under the plan is paid in the same form and at the same time as the first payment under the eliminated or restricted optional form and except for aspects of the optional form that may be

eliminated or restricted under other provisions of the regulations under section 411(d)(6). Plan amendments that eliminate or restrict an optional form of benefit must provide that the elimination or restriction does not apply to any distribution that has an annuity starting date earlier than the 90th day after the date the participant receiving the distribution has been furnished a summary that reflects the amendment and that satisfies the ERISA requirements at 29 CFR 2520 104b-3 relating to a summary of material modifications or, if earlier, the first day of the second plan year following the plan year in which the amendment is adopted.

1.411(d)-4 Q&A 2(e)

Under certain express requirements, the regulations permit the elimination of optional forms of benefit in connection with distribution event transfers and employment change transfers of benefits from one plan to another with a participant's consent. The section 411(d)(6) requirements do not apply to amounts that have been distributed. Amounts that are directly rolled over to another plan under section 401(a)(31) are considered distributed under section 411(d)(6) Amounts that are distributable in an eligible rollover distribution must be rolled over under section 401(a)(31) to accomplish a distribution event transfer (except for certain cases in which the entire amount cannot be rolled over under section 401(a)(31), such as cases in which a single-sum distribution option is not available, or the participant's benefit includes an amount attributable to basis under section 72 (generally, after-tax employee contributions)). Where the entire amount distributable cannot be rolled over, an elective distribution event transfer under section 414(l) is permitted if the participant's entire nonforfeitable accrued benefit is transferred by means of either an elective transfer of the entire nonforfeitable accrued benefit under section 414(l) or a combination of a contemporaneous section 401(a)(31) transfer and a section 414(l) elective transfer. The regulations also apply for distributable event transfers between defined benefit plans and defined contribution plans The right to distribution event transfers is an optional form of benefit under section 411(d)(6).

For transfers occurring on or after January 1, 2002, section 411(d)(6) is not satisfied by an elective transfer that occurs at a time at which the participant is eligible to receive an immediate distribution of the participant's entire nonforfeitable account balance in a single-sum distribution that would consist entirely of an eligible rollover distribution within the meaning of section 401(a)(31)(C) Such transfers must be accomplished by means of a direct rollover under section 401(a)(31) and section 414(l) elective transfers not permitted under the revised regulation must be eliminated by an amendment within the plan's GUST remedial amendment period.

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1.411(d)-4 Q&A 3(c)

The regulations permit the elimination of optional forms of benefit in connection with employment change transfers of benefits from one defined contribution plan to another with a participant's consent The exemption applies for elective transfers under section 414(l) of a participant's entire benefit under a defined contribution plan, that are made in connection with certain corporate transactions (such as a merger or acquisition) or in connection with a participant's change in employment status (for example, the transfer to a different subsidiary or division of the employer, without regard to whether the transfer constitutes a separation from service) to an employment status under which the participant does not accrue additional allocations under the transferor plan, whether or not the participant would be eligible for a distribution of the participant's entire benefit in a single-sum distribution that would be an eligible rollover distribution. Such employment change transfers can be made to a plan that is outside the employer's controlled group, to another plan of the same employer, or to a plan that is maintained by another member of the employer's controlled group. The employment change transfer can be made even if the participant's benefit is not fully vested, provided that the vesting schedule amendment requirements of section 411(a)(10) are satisfied by the receiving plan.

In order to be eligible for this employment change transfer exemption, the transfer generally must be between defined contribution plans of the same type. To the extent the benefits are transferred from a money purchase pension plan, the transferee plan must be a money purchase pension plan. To the extent the benefits being transferred are part of a qualified cash or deferred arrangement under section 401(k), the benefits must be transferred to a qualified cash or deferred arrangement under section 401(k) To the extent the benefits being transferred are part of an employee stock ownership plan as defined in section 4975(e)(7), the benefits must be transferred to another employee stock ownership plan. Benefits transferred from a profit-sharing plan other than from a qualified cash or deferred arrangement, or from a stock bonus plan other than an employee stock ownership plan, may be transferred to any type of defined contribution plan.

Rev. Rul 94-76

1.411(d)-4 Q&A 3(b)

A defined contribution plan may be amended to replace the ability to receive a distribution in the form of marketable securities as defined in section 731(c)(2) (other than employer securities under section 402(e)(4)) with the ability to receive a distribution in the form of cash. The right to distributions
from a defined contribution plan in the form of cash, employer securities or other property that is not marketable securities is generally protected.

If a plan includes an optional form of benefit under which benefits are distributed in the medium of an annuity contract that provides for cash payments, that optional form of benefit may be modified by a plan amendment that substitutes cash payments from the plan for the distribution of the annuity contract, where those cash payments from the plan are identical to the cash payments payable from the annuity contract in all respects except for the source of the payments (i.e., timing and amount)

A defined contribution plan that continues to offer a lifetime annuity form of distribution must purchase an annuity contract from an insurance carrier in order to provide that optional form (and the plan may either distribute that contract to the participant or hold the contract as a plan asset from which it makes the payments to the participant) A defined contribution plan that gives a participant the right to an in-kind distribution (including employer securities and property that is not marketable securities) may be amended to limit the types of property in which distributions can be made to a participant to specific types of property allocated to the participant's account at the time of the amendment (and with respect to which the participant had the right to receive an in-kind distribution before the plan amendment) A defined contribution plan that gives a participant the right to a distribution in a type of property may be amended to specify that the participant is permitted to receive a distribution in that type of property only to the extent that the plan assets allocable to the participants account at the time of the distribution include that type of property.

1.411(d)-4 Q&A 2(b)

Pursuant to section 1.411(d)-4, Q&A 10 of the revised regulations, an amendment to eliminate an age 70½ distribution option may apply only to benefits with respect to employees who attain age 70½ in or after a calendar year, specified in the amendment, that begins after the later of December 31,1998, or the adoption date of the amendment. An age 70½ distribution option is an optional form of benefit under which benefits payable in a particular distribution form commence at a time during the period that begins on or after January 1 of the calendar year in which an employee attains age 70½ and ends April 1 of the immediately following calendar year.

A plan using this relief generally may not preclude an employee who retires after the calendar year in which the employee attains age 70½ from receiving an optional form of benefit that would have been available if the employee had retired in the calendar year in which the employee attained age 70½. The amendment must be adopted no later than the last day of the remedial amendment period. Note: The guidance in the above proposed regulations is only effective after the date final regulations are adopted and will only apply to amendments adopted and effective after the date. Proposed regs.
1.411(d)-4

VIII. Miscellaneous

Line a. A defined contribution plan will not be treated as meeting the minimum vesting standards of section 411 (and, therefore, will not be a qualified plan under section 401 (a)) if under the plan the allocation of employer contributions or forfeitures is discontinued or decreased because of the attainment of any age. This rule is effective for plan years beginning on or after January 1, 1988 with respect to employees who have an hour of service in such years. A plan will violate this requirement if optional forms of benefit, ancillary benefits, or other rights or features that are provided with respect to allocations attributable to credited service prior to a certain age are not provided with respect to allocations attributable to credited service after that age. This requirement does not preclude a plan from setting a cap or limit on the total employer contributions and forfeitures that will be allocated to a participant's account or from limiting the total number of years of service that will be taken into account in determining the amount of such allocations, provided those limits are not directly or indirectly tied to age. However, in applying any limitation based on years of service, the plan may not take into account years of service prior to the effective date of this rule (i.e., the first day of the first plan year beginning after 1987) that are disregarded in determining allocations to a participant's account because of the participant's attainment of any age. Also, if the plan determines allocations using a service related allocation formula, then for 1988 and later plan year allocations the plan may not disregard, because of the participant's attainment of any age, any year of service completed by the participant. Continued allocations are not required where they would violate section 415 or cause the plan to fail to meet the integration requirements or to be discriminatory.
Proposed regs. 1.411(b)-2

Line b. A plan will violate section 401(a), including section 401(a)(25) and section 411(d)(6), if it may directly or indirectly deny a section 411(d)(6) protected benefit through the discretion of the employer or third parties, such as plan administrators. (See section VII for the definition of "section 411(d)(6) protected benefits".) This does not preclude a plan from conditioning the availability of benefits on stated nondiscriminatory, objective standards (including, e.g., availability of single sum distributions upon execution of a covenant not to compete) or prevent the employer from exercising administrative discretion in determining whether such standards have been met. A plan condition (such as the plan's level of funding) that is within the employer's discretion is not considered an objective standard.
1.411(d)-4 Q&A 4, 5 & 6